

## THE ELECTRICITY OMBUDSMAN, UTTARAKHAND

M/s Vijai Electricals Ltd.  
Plot no. 3 to 9, Raipur,  
P.O. Bhagwanpur, Tehsil Roorkee,  
Distt. Haridwar, Uttarakhand

Vs

The Executive Engineer,  
Electricity Distribution Division (Rural),  
Uttarakhand Power Corporation Ltd.  
Civil Lines, Roorkee, Haridwar, Uttarakhand.

Representation No. 20/2012

### **Order**

The petitioner, M/s Vijai Electricals Ltd., Plot No. 3 to 9, Raipur, P.O. Bhagwanpur, Tehsil Roorkee, Distt. Haridwar, Uttarakhand approached the office of the Ombudsman on 09.08.2012 against the order of the Consumer Grievance Redressal Forum, Garhwal zone (hereinafter referred to as Forum) dated 18.05.2012 upholding imposition of peak hour penalty of Rs.16,90,523.00 upon the petitioner by the Uttarakhand Power Corporation Ltd. (hereinafter referred to as respondent) vide an abstract of peak hour penalty amount signed on 02.11.2011 for January and February and 04.11.2011 for March. Delay in filing the complaint beyond the prescribed 30 days, was condoned on 28.08.2012.

2. The petitioner is an industrial consumer of the respondent with a contracted load of 1000 KVA connected to 11 KV Sahakari Samiti Industrial feeder emanating from 33 KV substation Raipur (Bhagwanpur). The petitioner claims that he was regularly paying electricity bills raised by the respondent and was not in arrears. The first intimation of penalty was received by him vide abstract of penalty amounts signed on 02.11.2011 and 04.11.2011. On being asked for an explanation, the respondent did not give any clarification but threatened the petitioner with disconnection of his supply if the amount was not deposited. The petitioner filed a complaint before the Forum to set aside the peak hour penalty imposed by the respondent.

3. The petitioner maintains that he did not receive any notice of the rostering/load shedding by the respondent and claims that if he had violated the restrictions, he should have been sent a bill immediately i.e. for violations in the month of January, bill should have been sent in February and if he had received such a bill, he would have become aware of the rostering program of the respondent. The petitioner maintained that he had received the bills for January, February and March 2010 on time and paid the same. The petitioner maintains that if any penalty was to be placed on him it should have been added to the bill for the month for which penalty was being claimed. The bills sent to him subsequently as penalty bills were not correct as they had been sent after two years and it was not possible to keep the data safe for so long. He alleged that the respondent had prepared false bills in a different format.
4. The petitioner also requested for interim stay from the Forum, against the demand of the respondent for payment of penalty amount. The petitioner informed the Forum that he had requested to pay the amount in three installments and had already paid one installment of Rs. 5,63,507.00. The Forum in their order stated that the petitioner's contention that there was no provision in the agreement between him and the respondent, for imposition of penalty for using power more than 15% of the contracted load during restricted hours, did not apply in this case. Tariff order issued on 23.10.2009 was relevant to the agreement and this Tariff Order clearly stated the penalty for usage of power more than 15% of the contracted load during restricted hours. The Forum also held that the respondent had given sufficient publicity to their order for restricted usage. The petitioner's statement that he had used power carefully during peak hours also showed that he had full knowledge of the restrictions placed on industrial units like his. On the question of whether the petitioner had used more than 15% of the contracted load during the restricted hours, the Forum on the basis of the documents viz. load survey report and MRI, was satisfied that the respondent's contention that the petitioner had used more than 15% of the contracted load was correct. Regarding the contention of the petitioner that the levy of the penalty bill was time barred, the Forum did not find any Regulations to this effect and hence ruled that the petitioner was liable to pay the penalty as charged by the respondent minus the amount already paid.
5. The petitioner aggrieved by the order of the Forum approached the office of Ombudsman with the plea that the order of the Forum be set aside and the respondent

be restrained from realizing the amount for peak hour penalty for the months of January, February and March 2010 as shown by the respondent in the abstract of penalty amount bill sent to the petitioner.

6. The respondent maintained that the scheduled rostering program, duly approved by the Uttarakhand Electricity Regulatory Commission (hereinafter referred to as UERC), was notified for the general public including the petitioner, in prominent newspapers. As evidence copies of newspapers Amar Ujala and Times of India cuttings dated 20.01.2010 were provided. There is no provision for giving individual intimation of scheduled rostering program. The respondent stated that charging of penalty was a different matter than sending bill for monthly consumption. There was no provision or bar by which the penalty bill could not be sent separately. It was wrong to claim that it was not possible to preserve the data and to allege that the data had been tampered with. The respondent stated that the bills had been sent to the petitioner in less than two years. An abstract of the penalty bill was sent and thereafter added with the regular monthly bills. The penalty has been charged as per the provisions of RTS-7 (6) (iii). Further regarding the petitioner's claim that the agreement between the two parties did not provide for peak hour penalty, the respondent has stated that this penalty is levied as per the Tariff Order.
7. The respondent stated that the petitioner was served the bill for violation of scheduled rostering as per RTS-7 (6) (iii). This provision provides that the consumer not opting for continuous supply shall not be allowed to use power in excess of 15% of their contracted load during the period of restriction approved by the Commission from time to time. As no separate column is provided in the Performa of the bill, the penalty was included under the column misc. charges and bill for penalty amount describing it as 'abstract of penalty amount' was attached to the bill. The respondent maintained that the petitioner was provided with a copy of the load survey as well as calculation of the penalty charges. The respondent has maintained that the copy of load survey was given to every consumer who had violated the peak hour restriction and in case the petitioner had not received the same, the petitioner could have made a request for a copy of the same. Regarding the petitioner's complaint that the respondent threatened disconnection, it is maintained that the connection is liable to be disconnected on nonpayment as per law.

8. Regarding delay in raising the bill, respondent claimed that it took considerable time to develop the KCC Online Software Module. A long period was taken in developing the software and studying the individual load survey reports/feeding the data of individual consumers on the system. Thereafter time was taken in seeking approval from the GM (Commercial) for the penalty bill and only after completing all these formalities the penalty bills were served on the consumers. The respondent also maintains that the petitioner has not suffered due to delay in submitting the penalty bill but, on the other hand, has benefited financially from paying the penalty amount late.
9. Brief facts of the case are that in January 2010, the respondent was directed by UERC to approach the Commission for approval of scheduled load shedding in the State. As per the permission granted, restrictions were approved by UERC from 21.01.2010 to 31.03.2010 from 1700 hours to 2400 hours for induction furnaces and rolling mills and for 'all industrial consumers being fed through industrial and independent feeders except continuous category dedicated industrial consumers' from 1800 to 2300 hours. About one and half years later the respondent issued bills, claiming the penalty amount for peak hour violations, to a number of industries including that of the petitioner. The petitioner objected to the imposition of penalty and approached the Forum which did not give him the relief sought and subsequently he approached the Ombudsman.
10. The respondent in January 2010 applied to UERC vide their letter dated 15.01.2010 for scheduled load shedding in the State with a proposed area wise rostering schedule. UERC, in exercise of its power u/s 23 of the Electricity Act, 2003 vide their order dated 18.01.2010 approved for the period 21.01.2010 to 31.03.2010 (a) area wise power cuts/rostering (b) restriction in usage beyond 15% of contracted load during restricted hours for non continuous industry consumers being supplied from industrial and independent feeders at 132 KV, 33 KV or 11 KV emanating from primary and secondary substations including SIDCUL Haridwar/Pantnagar and Induction Furnaces and Rolling Mills. UERC further directed that 'irrespective of individual drawals on industrial feeders during restricted hours, UPCL shall be at liberty to cut the feeder, if the situation so warrants, in case the overall loading on the feeder is more than 15% of the total contracted load of all the consumers on the feeder, provided, that such feeder

shall not be cut if continuous supply consumer(s) is/are connected to that feeder.’ It was also clarified by UERC that in case of improvement in availability of power during scheduled/unscheduled power cut, UPCL shall grant corresponding relief to consumers and gradually reduce load shedding for them.

11. UERC directed UPCL to take out the full MRI dump with load survey and submit the same to UERC by 15.04.2010. UERC further ordered that (i) UPCL should publicise the schedule to the consumers through public notice in at least one English and two Hindi daily newspapers having wide circulation in the State and stated that the notified scheduled cut/restriction period would become applicable only on or after the date of publication of such notice. They also directed that the notice must contain all the terms and conditions apart from area wise rostering schedule and (ii) UPCL shall intimate the approved plan to the Industrial Associations individually immediately on receipt of UERC’s approval.
12. On receipt of the approval of their proposal, with minor modifications, from UERC, the respondent issued public notice in the Amar Ujala (19.01.2010) and Times of India (20.01.2010). The respondent also wrote to GM (Distribution) to communicate the same to all their subordinate offices and paste a copy of the schedule on the notice board of their offices. A copy of this letter of respondent dated 19.01.2010 was also marked to President of different Industry Associations at Dehradun, Udham Singh Nagar and Roorkee.
13. Arguments that are common to a number of cases are mentioned below.
  - (i) Application of penalty during peak hours has been raised, levy of penalty not warranted. It has been contended that use of power during peak hours attracts a higher tariff and hence penalty on the same cannot be imposed. Moreover, the agreement between the petitioner and the respondent does not talk about any penalty during peak hours.  
Correct position  
The agreement is very clear that the consumer is bound by Tariff Orders issued from time to time. In the present case the Tariff Order, issued by the UERC in 23.10.2009 for the period 01.10.2009 to 31.03.2010, is applicable. The Tariff Order RTS-7 (6) (iii) states

6. *Continuous and Non-continuous supply*

*(iii) Consumers not opting for continuous supply (Non-continuous supply) shall not be allowed to use power in excess of 15% of their contracted demand during restricted hours of the period of restriction in usage approved by the Commission from time to time. For such consumers Energy charge, Demand charge and other charges as per rate of charge given above shall be applicable. However, any violation detected in usage of power during restricted hours (above 15% of contracted load) shall attract a penalty, continuous supply surcharge and other terms as specified below:*

*a) There shall be graded penalty for violation of load during restricted hours of each day beyond a limit of 15% of Contracted Demand (rounded off to next higher integer) based on the following two factors:*

- Quantum of load used beyond of 15% in each time slot (30 minutes duration) of restricted hours*
- No. of time slots during which violation occurred in restricted hours*

*b) For each time slot of restricted hours penalty shall be zero for load upto 15% and shall be proportional to load beyond this limit.*

*(c) Caution: Industrial consumers are cautioned that even under this moderated graded penalty, consumption of power beyond 15% would be prohibitively expensive and hence, they are advised to restrict the consumption during the period of restriction within the said limit.*

Thus, the Tariff Order has made it clear that violation of restricted hours would attract penalty.

- (ii) Non communication of penalty in public notice. The petitioner contended that there was no communication that penalty would be attracted in case of violation of restricted hours.

Correct position

While it is true that the full and complete orders of UERC were not mentioned in the advertisements, at the same time it was the duty of the consumers to seek full details either from the respondent or by consulting the website of the respondent. The respondent was bound to charge for violation of restricted hours as per the order of UERC as the Tariff Order has no provision to allow non charging of penalty if individual consumers were not aware of the fact that

penalty was leviable, on use of power beyond 15% of the contracted load, during notified restricted hours.

- (iii) Use of terminology by the respondent different than that used in the Tariff Order.

Correct position

While the respondent would be well advised to use the terminology employed in the relevant Order the essence of the order is well known and understood among the industrial consumers whatever might be the terminology used. As per the approval taken by the respondent from UERC there was an effort to conserve electricity due to shortage of power with the respondent. With this purpose in mind the respondent had requested UERC to permit them to (a) impose restrictions during certain hours on certain types of industries; and (b) carry out area wise rostering/load shedding during certain periods of the day on the rest of the consumers. The petitioner in the present case is covered under sr. 11 of the publication which relates to 'all industrial consumers being fed through industrial and independent feeders except dedicated continuous category consumers'.

- (iv) Non intimation of rostering to consumers.

Correct position

Intimation regarding the restrictions was given through publication of notices in newspapers, information about the restrictions was also displayed on the website of the respondent and letters were sent to all industrial associations in the State. Lack of knowledge of the restrictions, therefore, cannot be taken as a valid ground for violation of restricted hours.

- (v) Practice of information about restricted hours being given by the respondent's local staff.

Correct position

The respondent is not bound to individually intimate consumers about restricted hours. Where such information was given in the past was a matter of courtesy extended to the consumer.

- (vi) Non compliance of orders of UERC - The respondent did not follow the orders of UERC (a) by not including terms and conditions in their publication; (b) UPCL shall be at liberty to cut the feeder, if the situation so warrants, in case the overall loading on the feeder is more than 15% of the total contracted load

of all the consumers on the feeder provided; (c) restrictions to be closely monitored and UPCL to take out full MRI dump with full load survey and submit to the Commission by 15.04.2010; and (d) the respondent also did not follow the provisions of the Tariff Order that copy of the MRI and load survey should be provided to the consumer being billed for violation of the restrictions imposed on certain categories of industrial consumers.

Correct position

(a) The advertisement/public notice was sufficient. Consumers who were so inclined could have sought more details from the local staff of the respondent or seen the full details on the website of the respondent; (b) it was the option of the respondent to disconnect the feeder, hence the consumer cannot claim relief because the feeder was not disconnected; (c) this was between UERC and the respondent; and (d) while it is correct that the respondent did not provide the MRI report along with the demand for the penalty, it is equally true that wherever the consumer asked for it, the information was provided.

(vii) Delay in raising penalty bill - Petitioner has maintained that there was no justification for raising the bill after a gap of almost two years and claimed that such charges were time barred.

Correct position

Section 56 (2) of the Electricity Act clearly provides that bills can be submitted up to two years after the period when they became due. In view of this the bills submitted between July 2011 – December 2011 cannot be considered time barred.

14. While there have been procedural deficiencies committed by the respondent, it does not gainsay the use of load more than 15% of the contracted load during restricted hours. The MRI and load survey reports confirm the use and, therefore, the violation of the restricted hours. The penalty charged by the respondent is in accordance with the Tariff Order of October 2009 approved by UERC.
15. I have examined all the documents and listened to the arguments of the both parties and am of the view that despite the procedural shortcomings, on part of the respondent, there is no doubt that the restrictions imposed by the order dated 18.01.2010 of UERC were violated by the petitioner and therefore the petitioner is liable to pay the penalty for these violations.

16. Meanwhile, the respondent informed UERC on 08.02.2012 that ‘their field officers had confirmed that there was drifting in clock in the meters of some industrial consumers for the period from 21.01.2010 to 31.03.2010’. The respondent recommended that ‘the benefit of clock drifting may be allowed to the consumers who used power during restricted hours only maximum of one time slot in a day either first slot or last slot during the entire period of restrictions’. UERC vide their letter dated 05.03.2012 approved that ‘the benefit of clock drifting for one slot to the consumers till the meter clock are synchronized should be allowed.’ In view of the orders of the UERC, the benefit of clock drifting for violations in one time slot either at the beginning or the end during the restricted hours has to be applied wherever relevant for each day during the period 21.01.2010 to 31.03.2010.
17. In the present case of M/s Vijai Electricals Ltd., there were violations in multiple slots during January, February and March 2010. As these violations occurred during the entire period of restriction, the benefit of clock drifting as approved by UERC cannot be given to the petitioner.
18. The order of the Forum is upheld. Petition is dismissed.

Dated: 25.09.2013

(Renuka Muttoo)  
Ombudsman